IN THE COURT OF APPEALS OF IOWA

No. 3-1063 / 13-0361
Filed January 9, 2014

KELLIE NELSON,
Plaintiff-Appellant,

vs.

MERCY HEALTH SERVICES-IOWA, d/b/a MERCY MEDICAL CENTER-NORTH IOWA, JOSHUA R. FRENCH, M.D.; RAJENDRA SINGH, M.D.; STEVEN C. ALLGOOD, M.D.; JUSSEIN MOHAMED, M.D.; and MASON CITY CLINIC, P.C.,
Defendants-Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Chris Foy, Judge.

A patient alleging medical malpractice appeals the grant of summary judgment to the medical doctors and health care facilities. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun and White, LLP., Charles City, for appellant.

Joseph L. Fitzgibbons of Fitzgibbons Law Firm, Estherville, for appellees Mercy and Singh.

Frederick T. Harris, Des Moines, for appellees Allgood, Mohamed, and Mason City Clinic, P.C.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

Kellie Nelson sued doctors and medical centers responsible for her gall bladder removal and post-surgery treatment. Before she designated expert witnesses as required by Iowa Code section 668.11 (2011), her attorney moved to withdraw, and she consented. Nelson blames her inability to timely find new counsel for many of the adverse rulings in her case. On appeal, she challenges the grant of summary judgment, as well as underlying procedural orders.

Because the district court was reasonable in setting pretrial deadlines and Nelson failed to substantially comply with the requirements of section 668.11 within those deadlines, we find no abuse of discretion. Finding no legal error in the district court's grant of summary judgment, we affirm.

I. Factual Background and Proceedings

The following facts may be gleaned from the summary judgment record. On May 11, 2009, Kellie Nelson had her gall bladder removed. Hussein Mohamed, M.D, performed the laparoscopic cholecystectomy at Mercy Health Services–Iowa, doing business as Mercy Medical Center–North Iowa (Mercy) in Mason City. The surgery lasted from roughly 12:30 p.m. to 2 p.m. The hospital discharged Nelson at just after 7:30 p.m.

Nelson returned to Mercy's emergency room about 9:20 that same night, complaining of severe abdominal pain. She was evaluated by Rajendra Singh, M.D.; Steven Allgood, M.D.; and Joshua French, M.D. The doctors prescribed her narcotics to control the pain and discharged her from the emergency department at 11 p.m.

Two days later, on May 13, 2009, Nelson was back in the Mercy emergency room complaining of severe abdominal pain and vomiting. Doctors took an x-ray and admitted her to the hospital as an in-patient at 2:28 a.m. on May 14, 2009. Dr. Mohamed assessed Nelson later that day and eventually performed surgery to correct a bowel obstruction. The surgeon discovered a thirty centimeter loop of necrotic small bowel that had to be removed and reconnected. Nelson stayed in the hospital until May 19, 2009.

On May 11, 2011, Nelson filed a petition alleging negligence on the part of Mercy, Dr. Mohamed, Dr. Singh, the Mason City Clinic, and Dr. Allgood.[1] Mercy and Dr. Singh filed an answer and affirmative defenses on May 31, 2011. Dr. Allgood and the Mason City Clinic filed an answer on June 21, 2011. Dr. Mohamed filed an answer on July 11, 2011. On September 19, 2011, the court issued an order scheduling trial for February 19, 2013.

On May 2, 2012, Nelson's attorney, Neven Mulholland, applied to withdraw, citing irreconcilable differences with his client. Nelson signed a consent to the withdrawal of counsel on May 17, 2012.

On May 21, 2012, Dr. Allgood, Dr. Mohamed, and the Mason City Clinic filed a motion for summary judgment, accompanied by a statement of undisputed facts. On May 23, 2012, Dr. Singh and Mercy filed their motion for summary judgment.

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[1] A fourth doctor, Joshua R. French, an employee of the University of Iowa Hospitals and Clinics, was dismissed from the suit on a motion of the State of Iowa, alleging failure to exhaust administrative remedies under the state tort claims act.

Also on May 23, 2012, the court issued an order granting attorney Mulholland's motion to withdraw. The order noted Nelson's confirmation of her consent to his withdrawal and her intent to seek another attorney to represent her. The defendants did not object to the withdrawal, but the court noted: "Their primary concern is that the withdrawal of Mr. Mulholland not impede the disposition in this action."

The May 23 order also stated:

> To allow Ms. Nelson a reasonable amount of time to retain another attorney and respond to the pending summary judgment motions, the Court will extend the deadline set out in Iowa Rule of Civil Procedure 1.981(3). Before Mr. Mulholland filed his application, the parties had agreed to modify the time periods for disclosure of their expert witnesses under Iowa Code § 668.11(1). Given the present status of the case, the Court finds that firm dates for the parties to disclose expert witnesses should be fixed.

The order extended the time for Nelson to disclose and certify her expert witnesses to August 20, 2012.

On August 8, 2012, Nelson filed a pro se "motion to extend deadline" asking the district court for "a 60 day extension to continue to search and retain counsel." The motion stated: "I do have an expert witness whom my former counsel failed to present and certify in previous hearings." Nelson named Dr. David Dreyfuss and said his testimony would be "critical" to her case. Nelson attached Dr. Dreyfuss's curriculum vitae and a bill to show he had been retained in February 2011. Nelson did not serve the motion on opposing counsel.

On August 20, 2012, the district court responded to the pro se motion by extending Nelson's deadline for filing a resistance to the summary judgment motions until September 20, 2012. Also on August 20, 2012, the defendants

resisted Nelson's extension request and asked for a hearing on their pending motions for summary judgment.

On September 24, 2012, attorney Judith O'Donohoe filed a "limited appearance of counsel" for Nelson. Attorney O'Donohoe applied for an extension of time (from August 20, 2012, until September 20, 2012) to comply with section 668.11(1). She also filed an "amended designation of expert witnesses" listing Dr. Dreyfuss, as well as an emergency medicine specialist and a gastroenterologist. Nelson's new counsel also filed resistances to the motions for summary judgment. The defendants resisted Nelson's application to extend the deadline to name her expert witnesses and moved to strike her amended designation.

The district court held a telephonic hearing on Nelson's motions on October 22, 2012. The next day, the court issued an order denying Nelson's request for an extension of the section 668.11(1) deadline. The court detailed the procedural history of the case, noting under the statute, Nelson's deadline to certify her expert witness came in early January 2012. The court acknowledged the parties informally agreed to extend the deadline until after they completed the depositions of Nelson and the three doctors, anticipating a completion time of February 2012. But the court said it "was not aware of and never approved" an extension of the deadline. The court also noted "very little took place" in the case between January and April 2012. The court concluded Nelson failed to establish good cause for another extension.

On November 1, 2012, the court granted the motions for summary judgment filed on behalf of Mercy, Dr. Singh, and Dr. Allgood.[2] The court concluded without a timely designated expert witness, Nelson could not carry her burden to show medical malpractice occurred. The court denied the summary judgment motion filed on behalf of the Mason City Clinic and Dr. Mohamed. The court focused on information from Nelson's ex-husband Dean, who averred that Dr. Mohamed "admitted to stapling the bowel of Plaintiff during surgery to remove her gall bladder." The court explained: "this type of mistake strikes the Court to be the kind that falls within the exception to the rule requiring expert testimony to establish a claim of medical malpractice."

Dr. Mohamed and the Mason City Clinic filed a second motion for summary judgment on December 21, 2012. In a statement of undisputed facts attached to the motion, Dr. Mohamed presented expert confirmation that he did not use staples in the course of Nelson's gall bladder surgery.

On December 19, 2012, Nelson filed a motion for leave to amend her petition to add an allegation that Dr. Mohamed failed to ensure her informed consent to the surgery. The Mason City Clinic and Dr. Mohamed resisted, alleging the proposed amendment substantially changed the issue before the trial court. The court denied the motion for leave to amend, pointing out Nelson did not have an expert witness to support the informed consent claim: "The Court

[2] Nelson filed a notice of appeal, or alternatively sought discretionary review from the grant of summary judgment. Our supreme court found the order to be interlocutory and denied review.

sees no purpose in allowing Plaintiff to add a claim that she will be unable to prove at trial."

On January 22, 2013, Nelson filed a resistance to Dr. Mohamed's second motion for summary judgment, alleging she could prove negligence without "an independently hired expert witness." The resistance mentioned admissions by Dr. Mohamed and information from an upcoming deposition of surgical resident Joshua French.

On February 11, 2013, the district court determined Dr. Mohamed and the Mason City Clinic were entitled to summary judgment on "the newest theories of medical malpractice raised by the Plaintiff." Nelson filed a timely notice of appeal.

II Standards of Review

We review district court rulings concerning pretrial deadlines for an abuse of discretion. *Hantsbarger v. Coffin*, 501 N.W.2d 501, 506 (Iowa 1993).

The district court's assessment of summary judgment motions is guided by Iowa Rule of Civil Procedure 1.981(3). A grant is appropriate

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Iowa R. Civ. P. 1.981(3). If reasonable minds can reach different resolutions, a fact question exists. *See Estate of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC*, 819 N.W.2d 408, 414 (Iowa 2012). We review the district court's ruling on the summary judgment motion for the correction of legal error. *Id.*

III. Analysis of issues

Nelson divides her brief into the following five issues: (1) whether the district court abused its discretion in setting a deadline for expert witness disclosure under Iowa Code section 668.11, (2) whether acting pro se she substantially complied with section 668.11, (3) whether the district court abused its discretion in refusing her designation of an expert witness, "which was only one month late," (4) whether the district court erred in granting partial summary judgment based on lack of expert disclosure, and (5) whether the district court abused its discretion in denying her more time for discovery before ruling on the second motion for summary judgment. While we note some overlap between the issues briefed, we address each of Nelson's claims in turn.

A. Setting Deadline for Expert Witness Disclosure

Iowa Code section 668.11 provides deadlines for the designation of expert witnesses in medical malpractice cases. The provision reads as follows:

> 1. A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:
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> a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure.

Iowa Code § 668.11.

In Nelson's case, the last of the defendants' answers was filed on July 11, 2011, triggering a disclosure deadline of Monday, January 9, 2012. No expert designation was filed by May 17, 2012, when Nelson consented to the withdrawal of her original attorney. On May 23, 2012, the district court extended the

plaintiff's section 668.11(1) deadline until August 20, 2012, to accommodate Nelson's quest to find a new attorney.

In the category of no-good-deed-goes-unpunished, Nelson now alleges the district court abused its discretion in giving her extra time to comply with the designation deadline. She points out the attorneys had previously reached an informal agreement to modify the deadline until after depositions were finished. But at the time of the informal agreement, the depositions for Nelson, Dr. Singh and Dr. Allgood were scheduled for late December 2011, and Dr. Mohamed's deposition was set for late February 2012. The parties started Nelson's deposition on December 21, 2011, but adjourned without finishing it and postponed the doctors' depositions indefinitely. None had been completed when attorney Mulholland withdrew. As the district court observed in its October 23, 2012 order: "For approximately four months from January 23 to May 2, 2012, Plaintiff and Mr. Mulholland did very little to move this litigation along." The district court decided after attorney Mulholland withdrew, it was important for the court to fix "firm dates" for the parties' disclosure of expert witnesses.

Nelson's counsel makes the following argument in her appellate brief:

> It is totally unclear how the court anticipated that new counsel could be obtained and sufficient discovery completed from the defendant doctors to allow for a fact-based medical opinion on behalf of Nelson by 8/20/2012. Further, with a little imagination, the court could have realized that replacement counsel is going to be very difficult if not impossible to obtain because of the impossibility of the timeline set forth by the court.

Setting aside counsel's disrespectful tone, we find the substance of her argument unpersuasive.

Nelson's argument is similar to the plaintiff's position rejected by our court in *Hill v. McCartney*, 590 N.W.2d 52 (Iowa Ct. App. 1998). Hill argued "she should be held to a less stringent standard in meeting the [section 668.11(1)] deadline because she preceded pro se until the time of the hearing on these matters." *Hill*, 590 N.W.2d at 55. In determining whether good cause exists for excusing compliance with the section 668.11 time limit, courts consider three factors: (1) the seriousness of the deviation from the timeline; (2) the prejudice to the defendant; and (3) defense counsel's actions. *See id*. at 55 (citing *Hantsbarger*, 501 N.W.2d at 505–06).

We do not find the district court's action in extending the timeline for Nelson to designate an expert until August 20, 2012, to be an abuse of discretion under the *Hantsbarger* factors. August 20, 2012, was more than seven months after the statutory deadline. And August 20, 2012, was three months after Nelson consented to her attorney's withdrawal. Both of these durations are serious deviations from the section 668.11(1) timeline. *See Hill,* 590 N.W.2d at 55 ("For nearly four months she knew she did not have an expert to assist her and she did nothing.").

The defendants can show prejudice from a late designation. In its October 23, 2012 ruling denying Nelson an additional extension of time, the district court described that prejudice: "Trial is set for February 9, 2013, less than four months from now. Allowing plaintiff to certify her expert witness at this late date would require Defendants and their counsel to devote an inordinate amount of time and

energy into preparing for the testimony of her experts between now and the day of trial."

Finally, contrary to the situation in *Hantsbarger*, defense counsel did not "silently wait" for time to pass and then use Nelson's deficient designation to seek a prohibition of her experts. *See Hantsbarger*, 501 N.W.2d at 505–06. Here, defense counsel expressed concern in May 2012 that the withdrawal of attorney Mulholland would slow the progress of the case. But neither defense counsel nor Nelson objected to the court's extension of the deadline until August 20, 2012. We find the court acted within its broad discretion in providing Nelson three additional months to comply with the statute.

B. Substantial Compliance with Disclosure Requirements

Nelson next contends the district court should have determined her pro se filing on August 8, 2012, substantially complied with section 668.11(1). Our supreme court has determined section 668.11 does not require literal compliance. *Hantsbarger*, 501 N.W.2d at 504 (defining substantial compliance as "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute"). The objective of section 668.11(1) is "to require plaintiff to have his or her proof prepared at an early stage in the litigation in order that the professional does not have to spend time, effort, and expense in defending a frivolous action." *Id*. In *Hantsbarger*, the court opined that defendants in a medical malpractice case should not be required to speculate about an expert's qualifications or try to "decipher" the purpose for calling an expert. *Id.*

In this case, Nelson wrote in her motion to extend deadline: "I do have an expert witness whom my former counsel failed to present and certify in previous hearings. On February 23rd 2011, I retained Dr. David Dreyfuss and paid $2500 in doing so. I feel his testimony is critical in my case . . . ." Nelson also attached Dr. Dreyfuss's curriculum vitae.

Nelson's pro se filing failed to meet the requirements of section 668.11(1) in two ways. First, she did not serve her motion on opposing counsel. Second, she did not certify "the purpose for calling the expert." The district court found Nelson's failure to state her purpose for calling Dr. Dreyfuss to be significant, explaining:

> There are five Defendants in this case, each having a different role in the care and treatment provided to Plaintiff. There is nothing in the motion filed by Plaintiff to advise Defendants which of them might be critiqued by Dr. Dreyfus. The motion in which Plaintiff identified Dr. Dreyfuss as her expert witness gave no indication whether Dr. Dreyfus would testify as to the appropriate standard of case, issues of causation, or the amount of damages.

The district court correctly determined Nelson's pro se filing did not substantially comply with section 668.11.

C. Disallowance of Late Designation

In her third assignment of error, Nelson argues the district court abused its discretion in denying her motion to extend the deadlines for certifying her expert witnesses from August 20, 2012, until September 20, 2012—filed September 24, 2012, by her new counsel, Judith O'Donohoe. As reasons for the extension, Nelson cited the parties' informal agreement concerning the designation of experts, the fact that she was acting pro se at the time of the court's original

extension of the deadline, and the lack of prejudice to the defendants because they had already obtained two medical experts. That same date, Nelson filed an "amended designation of expert witnesses pursuant to section 668.11(1)," which listed three medical doctors and the purpose of their expected testimony.

As discussed above, on October 23, 2012, the district court denied Nelson's request for a second extension, finding it represented a "serious deviation from the law." The district court also described the prejudice to the defendants in terms of their condensed time frame to prepare for the testimony of Nelson's experts before the February 19, 2013 trial date.

On appeal, Nelson emphasizes what she perceives as a lack of prejudice to the defendants from the one-month designation delay. Even if we did not accept the district court's prejudice findings, a lack of prejudice, by itself, does not excuse a late designation. *See Nedved v. Welch*, 585 N.W.2d 238, 241 (Iowa 1998).

Like the district court, we do not view the informal agreement between Mulholland and defense counsel as a panacea for Nelson. The district court took that agreement into account when it originally extended the deadline for three months. The earlier agreement cannot be resurrected to excuse Nelson's additional months of non-compliance.

Finally, Nelson's difficulty in finding new counsel, while unfortunate, does not insulate her from the responsibilities of prosecuting her own malpractice action. The district court aptly found, "Plaintiff and her former counsel bear most, if not all, of the responsibility for her failure to designate any expert witness other

than Dr. Dreyfuss." As was the case in *Nedved*, Nelson is responsible for the actions of her former counsel that contributed to the late designation. *See Nedved*, 585 N.W.2d at 241. Moreover, Nelson consented to Mulholland's withdrawal. Although she was looking for new counsel, she was at least temporarily opting to represent herself. "If lay persons choose to proceed pro se, they do so at their own risk." *Metro. Jacobson Dev. Venture v. Bd. of Review of Des Moines*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991) (explaining "the law does not judge by two standards, one for lawyers and the other for lay persons").

We conclude the district court did not abuse its discretion in denying Nelson an additional extension of time to designate expert witnesses.

D. Grant of Partial Summary Judgment

In her fourth issue, Nelson objects to the grant of summary judgment to Mercy, Dr. Singh, and Dr. Allgood—alleging three mistakes in the district court's consideration of the defendants' motion. First, she contends the court erred in ignoring a "sufficient affidavit" by Dr. Dreyfuss after Nelson's pro se filing designated him as an expert. Second, she complains the court failed to recognize "the defense counsels' roles in falsely stating that the Plaintiff's expert disclosure deadline had passed," which hampered her ability to obtain new counsel. Third, she argues the court should have allowed additional time for discovery before taking up the summary judgment motions.

We have rejected the underlying premises for Nelson's first and second sub-issues in our earlier analysis. Nelson's pro se filing did not substantially

comply with section 668.11(1), and the court set a reasonable deadline for compliance with the statute.

Nelson's remaining objection focuses on the district court's October 23, 2012 denial of her conditional application for continuance of the motion for summary judgment sought under Iowa Rule of Civil Procedure 1.981(6). Under the rule a "court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had." A party seeking a continuance under rule 1.981(6) must "state reasons why facts essential to justify a resistance cannot be presented." *Good v. Tyson Foods, Inc*., 756 N.W.2d 42, 46 (Iowa Ct. App. 2008). The reasons should be "set forth by affidavit" and explain "why it cannot proffer evidentiary affidavits and what additional factual information is needed to resist the motion." *Id.*

Nelson did not offer a convincing justification for a third extension of time to resist the summary judgment motions, which had been on file since May 23, 2012. She requested the continuance to "allow the depositions of all the parties to be completed and a reasonable time thereafter for the Plaintiff to retain final reports from her experts" on the issue of medical negligence.[3] Nelson attached her own affidavit spelling out her difficulties in retaining new counsel, her former attorney's affidavit regarding the informal agreement to extend the expert witness

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[3] Nelson alleges for the first time on appeal that "it was possible" she could have presented evidence to avoid summary judgment through the testimony of "non-defendant treaters" such as radiologist Ryan Smith, nurse April Schmitz, or emergency room doctors William Parker or Joshua French. Issues not raised before the district court in a summary judgment action cannot be advanced for the first time on appeal. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 758 (Iowa 2010).

deadline, and an affidavit of her present counsel asserting the information currently available to Nelson was insufficient to obtain complete opinions from medical experts. None of those affidavits justified another extension of time. We find no abuse of discretion in the district court's denial of a continuance for Nelson to respond to the summary judgment motions. *See Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 302 (Iowa 1996).

E. Grant of Second Motion for Summary Judgment

The court denied summary judgment for Dr. Mohamed and the Mason City clinic on the sole basis that the record contained a question of material fact as to whether the surgeon stapled Nelson's bowel during the gall bladder surgery. By the time of the second motion for summary judgment, Nelson had conceded Dr. Mohamed did not use staples during the surgery.

Nevertheless, Nelson alleges the district court should not have granted the second motion for summary judgment without (1) allowing her to amend the petition to allege a lack of informed consent, (2) allowing her more time for discovery, or (3) recognizing Dr. Mohamed or other treating physicians could provide sufficient expert opinions to support her claim of negligence.

We turn first to the proposed amendment. On December 19, 2012, Nelson sought leave to amend her petition, which was originally filed on May 11, 2011, to add an informed-consent claim under Iowa Code section 147.137. Iowa Rule of Civil Procedure 1.402(4) allows a party to amend a pleading after a responsive pleading has been served only by leave of court or by written consent of the adverse party. Leave to amend is to be freely given when justice so

requires. *Grace Hodgson Trust v. McClannahan,* 569 N.W.2d 397, 399 (Iowa Ct. App. 1997). Amendments are the rule; denials are the exception. *Id.* The timing of a motion to amend is not the determinative factor; the question is whether the proposed amendment substantially changes the issues before the court. *Allison–Kesley Ag Ctr., Inc. v. Hildebrand,* 485 N.W.2d 841, 845–46 (Iowa 1992).

In this case, the district court was correct in determining Nelson's informed consent claim involved substantially different elements than her professional negligence claim concerning the gall bladder removal and post-surgery treatment. *See Finley v. Culligan*, 548 N.W.2d 854, 861 (Wis. Ct. App. 1996) ("A failure to diagnose is one form of medical malpractice. . . . A failure to obtain informed consent is another discrete form of malpractice, requiring a consideration of additional and different factors."). The court did not abuse its discretion in denying the motion to amend.

Nelson's next concern is a lack of adequate time for discovery. The district court dismissed the notion that Nelson could find relevant and favorable evidence if only the court would postpone its ruling, stating:

> The circumstances and events which form the basis of this case took place in May 2009, over 45 months ago. This case has been pending for nearly 21 months. Plaintiff has had ample time to gather evidence and follow up on needed depositions. To the extent that Plaintiff has not completed discovery she wants or does not have the evidence she needs, she has no one but herself to blame. The Court will not further prolong this litigation on the off chance that Plaintiff might be able to come up with some helpful evidence if given more time.

The district court's decision to proceed was reasonable. Nelson did not pursue the discovery she now seeks until January 2013, which was more than three

months after Nelson had new counsel. We find no abuse of discretion in the court's grant of the second motion for summary judgment without affording Nelson additional time for discovery.[4] *See Bitner*, 549 N.W.2d at 302.

Finally, Nelson argues the court erred in granting summary judgment because she had sufficient evidence to prove negligence during the surgery and post-surgery treatment based on the proffered testimony of treating physicians, including Dr. Mohamed himself.

To establish a prima facie case of medical malpractice, a plaintiff must offer proof to establish: (1) the applicable standard of care, (2) a violation of that standard, and (3) a causal relationship between the violation and the injury. *Bazel v. Mabee*, 576 N.W.2d 385, 387 (Iowa Ct. App. 1998). Nelson's case is one of those medical malpractice lawsuits that are "so highly technical they may not be submitted to a fact finder without medical expert testimony supporting the claim." *See id*.

The district court found nothing in Dr. Mohamed's deposition that could reasonably be construed as an admission he failed to properly close the trocar site he used to perform the gall bladder surgery or failed to treat Nelson's post-surgery complications in a timely manner. The court also rejected Nelson's assertion she could establish the standard of care and Dr. Mohamed's breach of

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[4] Nelson alleges on appeal that the district court also denied her due process by declining to postpone its ruling on the second summary judgment motion. She did not seek a ruling on her constitutional claim following the summary judgment order. Accordingly, we do not address it on appeal. *See Meier v. Senecaut,* 641 N.W.2d 532, 537 (Iowa 2002) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.").

that standard through the testimony of treating physicians. The court pointed out "disclosure under section 668.11 may be required when a treating physician gives an opinion about reasonable standards of medical care." *Hansen v. Cent. Iowa Hosp. Corp*., 686 N.W.2d 476, 482 (Iowa 2004). Even if section 668.11 was not a bar, Nelson placed no evidence in the summary judgment record to show any treating physician formed opinions in the course of her care which would satisfy her requirement to offer expert testimony in support of her lawsuit. The district court properly granted summary judgment for Dr. Mohamed and the Mason City clinic.

To recap, we find the district court acted reasonably in setting a new deadline for Nelson to designate expert testimony, appropriately determined Nelson's pro se motion did not substantially comply with section 668.11, acted within its discretion in declining to continue its consideration of the summary judgment motions, and appropriately granted summary judgment for all defendants—given Nelson's failure to timely designate expert witnesses.

AFFIRMED.